Supreme Court, U.S.
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No. 91-1030

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

PAMELA WITHROW,
Petitioner,

vs

ROBERT ALLEN WILLIAMS, JR.
Respondent.

ON WRIT OF
CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE
SIXTH CIRCUIT

JOINT APPENDIX

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Petition for Certiorari filed
December 12, 1991
Certiorari Granted April 20, 1992

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DOCKET ENTRIES

7/5/85	Respondent files Suppression Motion in Wayne County Circuit Court
9/3/85	Evidentiary hearing on Suppression Motion
9/27/85	Suppression Motion granted in part and denied in part
10/28/85	Trial commences
10/29/85	Respondent convicted of two counts of first-degree murder, two counts of felony firearm
11/6/85	Trial Court sentences Respondent to two concurrent terms of life imprisonment, and two consecutive terms of two-years imprisonment for felony firearm
12/18/86	Trial Court vacates one count of felony firearm on Respondent's motion
9/7/88	Michigan Court of Appeals affirms Respondent's conviction
6/9/89	Michigan Supreme Court denies parties leave to appeal.
11/9/89	United States Supreme Court denies Respondent's petition for writ of certiorari
12/7/89	Respondent files Petition for writ of habeas corpus in United States District Court (ED Mich)
4/14/90	Petitioner files Response to habeas petition

10/29/90	District Court enters opinion and order conditionally granting writ of habeas corpus
11/1/90	District Court enters judgment
11/16/90	Petitioner files notice of appeal
9/11/91	Sixth Circuit Court of Appeals affirms granting of writ
10/3/91	Sixth Circuit denies Petitioner's motion for rehearing
10/11/91	Sixth Circuit enters judgment
12/12/91	Petitioner files Petition for writ of certiorari with United States Supreme Court
4/20/92	United States Supreme Court grants certiorari

SUPPRESSION MOTION

STATE OF MICHIGAN

IN THE CIRCUIT COURT

FOR THE COUNTY OF WAYNE

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Circuit Court

No. 85-567271

vs

ROBERT ALLEN WILLIAMS,

Defendant.

MARTIN B. MARCUS P-34234

Attorney for Defendant

MOTION TO SUPPRESS CONFESSION/EVIDENCE AND FOR EVIDENTIARY HEARING

NOW COMES Defendant herein, ROBERT ALLEN WILLIAMS, by and through his attorney, MARTIN B. MARCUS, and says unto

this Honorable Court as follows:

1. That the Defendant is currently charged with two counts of Murder I, and two counts of Felony Firearm; contrary to MCLA 750.316 and 750.227(b).

2. That the Defendant was arrested on the above charges on April 10, 1985, at his residence and without a warrant, by the Romulus police.

3. That on April 10, 1985, the Defendant was questioned and made statements to the Romulus police concerning his involement [sic] in the above charges.

4. That on April 11, 1985, the Defendant was given a polygraph exam by the Michigan State Police, and made statements concerning his involvement in the above charges.

5. That on April 12, 1985, the Defendant was again questioned by the Romulus police, and the Defendant made statements concerning his involvement in the above charges. This conversation was

taped and transcribed, and a copy is provided with this Motion to the Court.

6. That based on information provided by Defendant, a search warrant was issued for Defendant's residence; and pursuant thereto, certain items of clothing were recovered.

7. That at the time of Defendant's arrest, the arresting officers did not have probable cause to arrest the Defendant.

8. That the above statements of the Defendant were involuntary in nature and were taken in violation of Defendant's rights under the 4th, 5th, and 6th Amend. [sic] of the U.S. Constitutino, and the corresponding sections of the Michigan Constitution.

9. That an evidentiary hearing is necessary in order to determine the circumstances under which the aforementioned confession/evidence was obtained and in order to determine whether the evidence in question should be suppressed.

* * *

[3]

Detroit, Michigan

Tuesday, September 3rd, 1985

10:15 o'clock a.m.

* * * *

THE CLERK: Docket No. 85 567-271, People versus Robert Allan Williams.

MR. MARCUS: For the record, Martin Marcus on behalf of Mr. Williams.

MR. JANICE: And I'm Lee Janice from the prosecutor's office.

THE COURT: All right, gentlemen.

Your motion, Mr. Marcus.

MR. MARCUS: Yes, Your Honor, today we are here on motion to suppress statements made by the defendant, along with some evidence which was seized based on this statement.

MR. JANICE: I'm ready.

THE COURT: Fine. You may proceed then.

THE COURT: Raise your right hand, sir.

DAVID EARLY

called as a witness by the Plaintiff, being duly sworn by the Court, was examined and testified as follows:

THE COURT: Please take the stand.

MR. MARCUS: Your Honor, before the witness starts to testify, let me ask, there is another officer. If he's going to testify, we ask he wait outside.

MR. JANICE: Sounds good to me. May I proceed.

THE COURT: Please do.

MR. JANICE: Thank you.

DIRECT EXAMINATION

BY MR. JANICE:

Q. Would you tell us your name, please?

A. David Early

Q. What do you do for a living, Mr. Early?

A. Detective-Sergeant with the Romulus Police.

Q. Are you one of the officers who is with that department, who is

investigating the deaths of Van Hooper, and is it David Stanley?

A. Correct.

Q. And during the course of that investigation, did you come in contact with Mr. Robert Williams?

A. Yes, sir, I did.

Q Do you see Mr. Williams in court today?

A. Yes, I do. Seated in the gray and black Tee Shirt.

Q. The REO Speed Wagon Tee shirt?

A. I can't see down that far. Yes.

MR. JANICE: May the record reflect witness identified Mr. Williams.

Q. Now, where was it you came in contact relative to this case?

A. My first contact was at his home in Taylor.

Q. And why was it you went to his home in Taylor?

A. I had interviewed a number of

witnesses previous to Mr. Williams in order to gather information on this case, and I was told by more than one that Mr. Williams might have information pertaining to it.

Q. Did you have information that Mr. Williams had been acquaintance of the deceased?

A. Yes, I did.

Q. What happened when you went to Mr. Williams' home?

A. I went to Mr. Williams' home. His mother answered the door. I had been there previous and left a card, and asked him to contact us, us being myself and my partner, and then finally I stopped by again. His mother let us in and informed us that Mr. Williams was in bed sleeping.

Q. Had Mr. Williams contacted you?

A. No, he had not.

Q. So you find out he was at home

sleeping. What happened from that point on?

A. At that point I advised his parents that I wished to talk to him, question him regarding this matter, and they said they would get him out of bed, and my partner waited while he got dressed and cleaned up.

Q. And what was the nature of your conversations with Mr. Williams at the house?

A. At the house Mr. Williams appeared more or less as if he were expecting. He informed his parents, he said, well they're questioning everybody else, they're going to question me too.

I asked Mr. Williams to company my partner and me to the police station. He agreed. We walked him to the police car and went to the police station.

Q. At that time was Mr. Williams under arrest?

A. No, he was not.

Q. He was free to go if he chose?

A. He was free to go or refuse.

Q. And at that point in time, were you focusing your investigation on Mr. Williams?

A. At that point in time it was not focused on him, no.

Q. So you got in the police car, went down to police station. What happened?

A. Then we went into my office in the Detective Bureau, began talking with Mr. Williams, who stated that he knew who had committed the murder, and started relating to us the facts as he claimed he knew them.

Q. I assume that perked up your interest to say the least?

A. Yes, sir.

Q. Now, what happened during that conversation?

A. Well, as the conversation went on,

the facts that were being related to me by Williams, did not fit with information that we knew already and had confirmed.

Q. In what respect?

A. In respect to other witnesses we interviewed, and the story Mr. Williams was telling us, as far as cars involved and time periods, and as Mr. Williams continued to talk it began to look like he had more than passing interest and was actually involved.

I would say it was approximately 20 minutes into the interview where Mr. Williams began to implicate himself. At that point we stopped the interview and advised the Miranda. Mr. Williams acknowledged he understood, and wished to continue with the statement.

Q. When you say you advised him of his Miranda to him, how exactly did you do

that, and what did you say?

A. I read the rights off the prepared form in the police department. It matches card I carry in my wallet if you need exact words.

Q. Would you tell us the exact words relative to the rights he had under the constitution?

A. I would have to read them off the card to get them exact.

Q. Would you do that?

A. As I think of it, this is revised the car. I think the form of the wording is slightly different

Q. Do you have your form with you?

A. I can check my file.

Q. I will get it.

A. This was taped recording. We also have the tape recording, Miranda and stuff.

Q. Do you have all the conversations on tape?

A. Yes, I do.

Q. Maybe I can get back to that in a moment, and we can just use the tape later on.

A. All right.

Q. You indicate it was approximately 20 minutes after the beginning of your conversation with him that you became suspicious that he might be involved?

A. Correct.

Q. So at that point you advised him of his Miranda rights?

A. That's right.

Q. And what happened from that point on?

A. From that point on he began to tell of his involvement in it, and actually being present at the scene at the time of the shooting, and then subsequently I also advised Mr. Williams that he was being placed under arrest.

Q. Now, at any point did you ever threaten Mr. Williams?

A. No, sir.

Q. Did you ever make any promises of any kind to Mr. Williams?

A. The only promise or statement of that type given Mr. Williams was that if he was only a witness with no involvement, he most likely would not be charged in the case, but then subsequently came to the point where he was definitely more than witness, and also polygraph examination was involved. We stated that he would have to pass polygraph examination and did not.

Q. At what point in time did you tell him that if he was just a witness he probably would not be charged?

A. I believe that was -- well, that was about midway through the conversation. I can't recall if it was before or after Miranda. There were probably three subsequent interviews after that. Each time Miranda advised.

After that we went over the same statements.

Q. When you interviewed Mr. Williams initially, at that time -- by the way what date was that?

A. That was on the -- April 10.

Q. Did you threaten Mr. Williams in any way?

A. No there was no threats.

Q. Coerce him in any way?

A. No, sir.

Q. Was there any indication to you that he was under the influence of narcotics or liquor or anything of that kind?

A. No, sir.

Q. Did he appear to be lucid?

A. Yes, he did.

Q. Was there any indication to you that he did not understand his Miranda rights?

A. No, on the contrary, elaborated that he understood them.

Q. Did you read each right aloud to him?

A. Yes, I did.

Q. And you indicated that you had initial interview on tape; is that correct?

A. Yes, sir.

Q. When was the second time you talked to Mr. Williams?

A. This interview took place in the morning of the 10th. I again interviewed him in the afternoon. The following morning he went to the Michigan State Police where there was a polygraph and interview done, and he came back to the station later in the day and was again interviewed at the police station.

Q. You did two interviews on the 10th yourself?

A. Correct.

Q. And then you did one interview on the 11th?

A. Correct.

Q. Each time --

A. I believe there was another one done on the 12th. Each time he advised of Miranda, and each Time it was recorded.

Q. Did you use the same procedure to advise him of his rights each time?

A. Yes, I did.

MR. JANICE: It's my understanding in speaking with defense counsel, Your Honor, that defense counsel is contesting the admissibility of the second, third and fourth statements only, in that they were the product of the first statement, which they claim to be illegal; is that right:

MR. MARCUS: That's correct.

BY MR. JANICE:

Q. Now, you indicated you had the first statement on tape?

A. Yes, sir.

Q. Do you have that with you?

THE COURT: Now, referring to the one of the 10th?

MR. JANICE: Yes.

A. I have the tape. We've got about 30 minutes on the first tape. Then it goes on into the second tape. It's second tape where the Miranda rights were given.

Q. Have you had a chance to review that tape?

A. Yes, I have.

Q. And whose voices are contained on that tape?

A. On that tape is myself, Officer Michael and Denko and Mr. Williams.

Q. And is that tape an accurate reflection of the totality of your conversation with Mr. Williams?

A. Yes, sir.

Q. Has it been altered in any way?

A. No, sir.

Q. Is it complete?

A. It is complete.

MR. JANICE: I'd move for its admission, subject to any voir dire by defense counsel.

THE COURT: Mr. Marcus?

MR. MARCUS: No objections, Your Honor.

THE COURT: It may be admitted. This is the first interview of April 10?

THE WITNESS: Correct.

THE COURT: The tape is being admitted without objection. Is the tape it's own record or will it be necessary to transcribe the tape as it's played?

MR. JANICE: I am sorry, Your Honor.

THE COURT: Will the tape serve as it's own record, or do you need a transcript of the tape recorded?

MR. JANICE: I would be satisfied the tape serves as it's own record.

MR. MARCUS: I agree.

THE COURT: All right, thank you. You don't need to take it.

(Tapes played.)

MR. MARCUS: Excuse me, Your Honor, I think we got to the point that is necessary for the hearing. The rest of it just goes

into the statements.

THE COURT: Okay. Any further questions?

MR. JANICE: I don't have any further questions.

THE COURT: Mr. Marcus?

MR. MARCUS: Yes.

CROSS-EXAMINATION

BY MR. MARCUS:

Q. Officer Early you said you went to Mr. Williams house on April 10. That was a Wednesday wasn't it?

A. I don't recall.

Q. Okay.

MR. MARCUS: Okay, Your Honor, I would ask the Court to take judicial notice, if you would, that was a Wednesday April 10th, 1985. I've already checked that.

THE COURT: all right, I'll accept your word.

BY MR. MARCUS:

Q. Okay, what was the reason you went to

Mr. Williams?

A. Was information that he had made statements that he knew about Stanley being murdered, and other witnesses that said they knew Williams had information. At one point, information that Mr. Williams had the gun involved, at one time.

Q. Did you have a warrant for Mr. Williams at that time?

A. No, that's not true.

Q. Well, how did he get down to the police station?

A. He rode in the back seat of my unmarked car, unhandcuffed.

Q. Did you search him before he went into the car?

A. I believe we probably did. That would be almost standard procedure.

Q. Okay, Officer, I'd like to show you a copy of this document, and see if you know what that is? Do you recognize that?

A. Yes, I do.. It's called an UD 103.

Q. What is the purpose of that?

A. All this is, to submit the computer information. At the top of the boxes are filled in. That's the computer information. It goes into Lansing. At the bottom we fill in a brief summary for our own records.

Q. That brief summary which says, information, on the bottom. Now it says arrest, and what does it say after that?

A. It says subject arrested by Sgt. Early, P. O., and Denko at residence.

Q. Is that a date?

A. 4-10-85.

Q. Are you saying it's incorrect?

A. I am saying it's a summary. It states in my actual report that he was picked up at the house, and questioned, and later questioned at the police station, after being picked up on the --

Q. One report says he was arrested at police station. This report says he was arrested at residence?

A. This report is for the computer, doesn't reflect any details.

Q. It does say he was arrested at his house?

A. Yes, it does says that on here.

Q. All right. Now, the first tape we heard when Mr. Williams was questioned, at that time he was not read his Miranda rights; is that correct?

A. At the initial start of the tape no., sir.

Q. But you went to his house and picked him up on the 10th, you did have information that he may have been involved in this crime somehow as accomplice?

A. Or had information pertaining to it, yes.

Q. What was the date that Mr. Williams

was arraigned on, do you know?

A. The 12th.

Q. Okay, so that was -- that was three days after he was arrested, because if I'm correct, correct me if I'm wrong, you said after you questioned him on the 10th, and his story did not jibe, so to speak, you told him he was arrested then, and read him his Miranda rights?

A. Correct.

Q. And after you read him his Miranda rights, you questioned him; is that correct.

A. That's correct.

Q. Okay, and was he questioned on the 11th also?

A. The 11th, I believe we went to the Northville State Police, where he was questioned by polygraph examiner.

Q. Okay. And how about on April 12, was he questioned on that day also?

A. On the morning of the 12th, he was

again advised by Miranda, and I questioned him, and that is the tape which we have transcribed.

Q. Okay, and that was all before he was arranged; is that correct?

A. Correct.

Q. Did you ever tell Mr. Williams that if he cooperated with you and told you everything he knew, that he would only be a witness, and not charged with this crime?

A. I told Mr. Williams that if he was a witness, and had no active part in the crime, and that could be confirmed by polygraph, that he would not be charged.

MR. MARCUS: I have no further questions of this witness.

THE COURT: Anything further on redirect?

MR. JANICE: No, sir.

THE COURT: You can step down, thank you.

(Witness excused.)

THE COURT: Anything further on redirect?

MR. JANICE: I don't have anything further, Your. Honor.

THE COURT: All right. Mr. Marcus?

MR. MARCUS: Yes, Your Honor. For the purposes of the hearing only, I would call Mr. Williams to the stand.

THE COURT: Mr. Williams, come forward please. Raise your right hand.

ROBERT A. WILLIAMS

the defendant, called as a witness in his own behalf, being duly sworn by the Court, was examined and testified as follows:

THE COURT: Please take the stand.

DIRECT EXAMINATION

BY MR. MARCUS:

Q. Please state your name for record?

A. Robert Williams.

Q. Okay. Mr. Williams, do you recall the date on April 10, when Officer Early and his partner came to your house?

A. Yes, I do.

Q. What happened when they came

A. My parents woke me up and told me two detectives wanted to question me. I got up and got dressed and come downstairs.

Q. Okay, and did the officers say anything to you there?

A. They asked me to come with them to the police station, that they was going to question me there.

Q. And You rode in the police car to the police station?

A. Yes.

Q. Did they search you before you went into the car?

A. Yes, they did.

Q. Did they handcuff you in the car?

A. No.

Q. You rode in the back the police car?

A. Yes.

Q. What happened when you got to the police station?

A. We were talking, and we started talking, and about 20 minutes after we were talking, Sgt. Early said something to Mike about reading him his rights, and lying, and he started to say something about my rights, and I said, well, I'm being arrested now because I didn't know something, and he says, yeah, and he stopped, and then we went on talking.

Q. Okay. Did you ever request attorney at that time?

A. No, not at that time.

Q. During your questioning, or before you were questioned, at any time, did the officers make any promises or deals with you?

A. Well, they told me I wouldn't be charged with nothing. They said I would just be witness for my testimony statement, and they said that, and then they left and said, well, talk to Sgt. Early. He said he talked to the

prosecutor and agreed with him.

Q. Agreed to what?

A. That I wouldn't be changed with nothing.

Q. And what was your part of the deal, not to be charged, what did you have to do?

A. Testify and make a statement against the murder.

Q. Okay, against who?

A. Mark Sennett.

Q. And did you do that?

A. Yes, I did.

Q. Okay, when Officer Early took you from your house on the 10th, April 10 did you think you were under arrest at that time?

A. Yes, I did.

Q. Okay, and you were at the station, and they questioned you for around 20 minutes before they read you your Miranda rights?

A. Oh, it was longer than that before we read the rights, and we were taking, and Mike started to say something. He started to say, well, okay you have the right.

I says, oh, now I'm being charged, now you are going to put me under arrest, and Sgt. Early says, I got news for you, you been under arrest since you left the house.

Q. Were you aware all your conversations were being taped?

A. No. I wasn't.

Q. Did you ever see the tape recorder?

A. Yes, I did, Friday afternoon.

Q. Okay, but not on Wednesday?

A. No, I didn't.

Q. And you were questioned again on April 11?

A. Yes, I was.

Q. Okay, that was before you went to court?

A. Yes, I wasn't arraigned until about 4

o'clock Friday afternoon.

Q. Okay, did you understand your rights when the officer read them to you?

A. Well, yes, more or less.

Q. All right.

A. Really wasn't -- wasn't thinking too clearly. I was nervous.

Q. Okay. I have nothing further.

MR. JANICE: Just a few questions.

MR. JANICE:

Q. Mr. Williams, you ever been convicted of felony previously?

A. Yes, I have.

Q. And could you tell us what and when?

A. Breaking and entering, '76.

Q. Anything else?

A. Receiving and concealing stolen property in '74.

Q. Anything else?

A. I believe there was attempted B and E.

Q. When was that?

A. '74. All those else were '73 actually.

Q. Anything else?

A. Another B and E. I think that's it.

Q. When was that?

A. '76.

Q. Anything else since then?

A. How many -- I think there was six. They were all break and entering and receiving and concealing stolen property.

Q. When was the last one?

A. '76.

Q. So you have six prior felonies?

A. Yes.

Q. Is this the first time in you life, when you're being questioned by these Romulus police officers, that you have ever been advised of your rights, or had you been advised of your constitutional rights before?

A. Yes, several times.

Q. This was not an unfamiliar procedure to you then?

A. No, but I just don't pay no attention

to them. Half the time I only get bits and pieces.

Q. After you heard them so many times you could probably recite them by heart, could you not?

A. No.

MR. JANICE: I have nothing further.

MR. MARCUS: I have nothing.

THE COURT: Thank you. You may step down, Mr. Williams.

(Witness excused)

THE COURT: Argument, gentlemen?

MR. MARCUS: Yes, Your Honor. We would ask that the confessions of the defendant, or the statements of the defendant be suppressed in this matter. We find about four problems here.

First, as the police report indicates, but Sgt. Early says it was incorrect, says defendant was arrested at his residence on April 10. This was a warrantless arrest, Your Honor, and it was a routine felony arrest. They could have obtained a

warrant. This causes arrest to be illegal under Payton vs. New York. An illegal arrest, there is a taint.

Also it was arrest without probable cause.

Once he was arrested the defendant was taken down to the police station. Officer Early testified that they had some information thinking that the defendant may have been an accomplice in this matter. The focus was on the defendant. He was questioned without Miranda warnings. It was after they elicited the information they wanted that they stopped the questioning, and then gave the defendant his Miranda warning.

As the defendant stated, and officer also stated, there were promises of leniency here. Told the defendant if he would tell them what happened that he would only be a witness in this case. The defendant told him what happened. They turned around and they're prosecuting the

defendant now. The officer also indicated, the officers left and talked to the prosecutor, and he would only be a witness if he testified in this matter.

Under People versus Conte, 365 NW2nd 648, the Court -- the Supreme Court announced the test for confessions or admissions where there's been promises of leniency, and its subjective test as to what the defendant believed. He felt that he was told he was going to be a witness. Based on that he told the officers what he had to say.

The biggest problem we find, Your Honor, is the delay in arraignment. Defendant was arrested on the 10th without a warrant. The case I would cite would be People versus Mallory, 365 NW2nd 673, which states that when a person is subject to felony arrest without warrant, the person must be brought promptly before a magistrate for the arraignment on the complaint and warrant.

Here he was arrested on the 10th. He was questioned on the 10th. He was questioned on the 11th and he was questioned on the 12th, and it wasn't until the afternoon, around three or 4 o'clock, before the court closed on the 12th, that he was taken over for arraignment.

I think on its face, the delay in arraignment was so the officers could question the defendant, and obtain these confessions, and based on that, Your Honor, we would ask that the Court throw out the confessions -- or the statements. I wouldn't want to call them confessions. Defendant never admitted committing a crime, only being there, and being in possession of evidence of a shirt and some gym shoes, which were taken from the defendant's house, which I suspect the prosecution would use at trial, and that was based on information given not statements.

MR. JANICE: In analyzing this, I

think that the issue has to be broken down into two time frames. I think the period from the initial contact with Mr. Williams up until the time he's advised of his Miranda rights is one time frame we have to look at, and then, secondly, we have to look at what happened from the point in time where he is advised of his Miranda rights.

In terms of the initial contact with Mr. Williams, up until he's advised of his Miranda rights, there are two issues I think to be determined. One was there a requirement that the police advise him of his Miranda rights, and secondly, was any statement made by Mr. Williams at that point in time voluntary.

I suggest to the Court that the questions can be answered by looking at the particular sequence of events as viewed by both the police officer and Mr. Williams himself.

It appears clear that neither the

police officers nor Mr. Williams initially viewed him as a defendant at that time.

We look at the conduct of the police officer when they came in contact with Mr. Williams. They did not act in a manner which would be consistent with a person being under arrest. They didn't handcuff him, put him in the car. It appears that they were merely bringing him down to the police station to see if he had any additional information which might help him find the perpetrator, and it appears that they think that it's Mr. Sennett who is in fact the prime suspect in this case.

Further, in looking at what happens as that initial statement goes along, the question then becomes at what point in time were the police obligated to inform Mr. Williams of his Miranda rights, and that certainly is a factual determination that the Court has to make, based upon the totality of the circumstance, based upon what's said by each party, and how it's

said, and that's something which I trust the Court will view fairly.

Irrespective through of how the Court views that initial statement when Mr. Williams is advised of his constitutional rights, I would suggest to the Court that even if the Court finds the statement up until that point, either non-voluntary or such that he could have been advised of his Miranda rights, I would suggest to the Court that that doesn't taint what would be said, once he is advised of his constitutional rights.

It could have been that the police officers may have made a mistake in not advising him of his rights prior to that, but once they did, and once Mr. Williams was aware that he no longer has to say anything, from that point then the police have fulfilled their constitutional duty, and whatever is said from that point on would be admissible.

Certainly the Court must take into

consideration that Mr. Williams is not a person who is unfamiliar with this sequence of events. He indicated that he had been advised of his Miranda rights many times and -- and in having gone through this procedure a number of times, clearly Mr. Williams is cognizant of the fact that he does not have to say anything further, and if he does say anything further, it's at his own peril.

As I understood from defense counsel, that the issue in terms of this hearing, in terms of the subsequent statements was only that they were products of the prior statements. Perhaps in testimony we did not deal as completely as could have been, with why he was not arraigned on the 12th, until the 12th, but in looking upon the facts of the case, it becomes clear why he was not arraigned until the 12th.

We know that the police had offered for him to take a polygraph exam with the State Police. That was done on the 11th,

and therefore that would have precluded the possibility of Mr. Williams being arraigned on the 12th. Further, I don't think that that means when they offer Mr. Williams the opportunity to take a polygraph, that the police can no longer have any contact with him up until -- up until the point of his arraignment.

THE COURT: Well, why was he arraigned at 4 o'clock on the 12th? Why couldn't he have been arraigned in the morning of the 12th?

MR. JANICE: Well, that's a point we never got into the hearing, Your Honor, because defense counsel had never indicated to me, that was not an issue at the hearing. IF the Court feels it is necessary to get into that, I would gladly do so now.

THE COURT: I think it is.

MR. JANICE: All right. Can I have just a second before we --

THE COURT: Certainly.

MR. JANICE: It would take me about 30 seconds. I'm sorry. Get back on.

DAVID EARLY

having been previously sworn to tell the truth, resumed the witness stand and testified as follows:

THE COURT: The officer is still under oath.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. JANICE:

Q. The testimony we have from you up until this point, regarding Mr. Williams, is that you came in contact with him on the 10th; is that correct?

A. Yes, sir.

Q. You took one statement. Then you advised him of his rights and took subsequent statement; is that correct?

A. That's correct.

Q. Did you take any more statements on the 10th.

A. Yes, sir.

Q. You took one statement. Then you advised him of his rights and took subsequent statement; is that correct?

A. That's correct.

Q. Did you take any more statements on the 10th?

A. No, sir.

Q. You had indicated in your conversation with Mr. Williams that he would be given an opportunity to go to the State Police and take a polygraph?

A. Yes, sir.

Q. And was that actually arranged to be done?

A. That was arranged to be done to take place on the 11th.

Q. And did Mr. Williams indicated he wanted to take polygraph or he did not was to take polygraph?

A. He indicated he wanted to take polygraph.

Q. And when was the polygraph exam actually scheduled with the State

Police?

A. For the morning of the 11th.

Q. And was he taken out to the State Police Post?

A. He was taken to the State Police Post by my partner Officer Denko.

Q. What time was the actual polygraph actually given?

A. It was scheduled to be given at 9 o'clock, 10 o'clock in the morning.

Q. When did it end?

A. Best I recall they returned about one o'clock to the station.

Q. After one o'clock did you have any further conversation with Mr. Williams?

A. Yes, I did.

Q. Why did you have further conversation?

A. Because he had not passed the polygraph, and I attempted to discuss with him what reasons he thought he had not passed, if he did tell the truth.

Q. When you indicate that he had not passed, are you indicating, to the polygraph examiners that he was not involved?

A. The polygrapher offered number of questions as to who the shooter was, and according to the report I received back, the polygraph said they were deceptive answers.

Q. When did you find that out?

A. Afternoon of the 11th.

Q. Did you immediately confront Mr. Williams with that?

A. Yes, sir.

Q. What happened from that point on, on the 11th?

A. The remainder of the afternoon, or part of the afternoon, Mr. Williams took us to different places to show us occurrences that had happened, and also where, to the best of his knowledge, a gun had been thrown in the river.

Mr. Williams stood by there along with sheriff divers to assist in locating the weapon that was supposedly thrown in there.

Q. By whom?

A. That was thrown in the water by Mr. Williams. We did not clear there until probably five, six in the afternoon.

Q. And was it possible to arraign him at the point in time on the 12th?

A. No, Sir.

Q. I mean on the 11th?

A. No, sir.

Q. Now on the 12th, what occurred?

A. The morning of the 12th I had conducted another interview with Mr. Williams, after we had not found what we were supposed to in the river, and asked him if one more time he would go through the story, and we gave him Miranda rights again and went through the whole story.

Q. What time of day was that?

A. This was the morning of the 12th. Immediately after that I then went to the Prosecutor's Office with the warrant request.

Q. And was a warrant request approved?

A. Yes, it was.

Q. And what time did you get that?

A. After lunch, the prosecutor usually breaks out there about 11:30 until 1 or so for lunch hour. Arraignments are 9, 11 or 2 o'clock.

Q. So he was arraigned at what time?

A. Attempt was made to get there fore the 2 o'clock. I believe we were somewhat later.

Q. Going back to the 11th, you indicated he went out to the waterfront with you with the divers?

A. Correct.

Q. Did you remain there were Mr. Williams until the divers completed their search?

A. We remained for a couple of hours. Then finally I had Mr. Williams brought back to the station. I remained until the divers were relatively done. I think it started nightfall and the divers were almost finished.

Q. You were looking for gun?

A. Yes.

Q. You did not find it?

A. No, sir.

Q. The next morning did you tell Mr. Williams you did not find it.

Q. Did you ask him then if he wanted to talk any more?

A. Yes.

Q. What did he say?

A. He indicated he would.

Q. And that's how the final statement on the 12th came about?

A. That's correct.

MR. JANICE: That's all.

CROSS-EXAMINATION

BY MR. MARCUS:

Q. Okay, Officer. Mr. Williams was arrested on the 10th though; is that correct?

A. Yes, sir.

Q. He could have been arraigned on the 10th; is that correct?

A. No, sir. It was late on the 10th when we finally decided he was under arrest, and at that time it was not possible to get to the prosecutor's office and the court, et cetera.

Q. Well, Mr. Williams, even after he would have been arraigned, could have come and taken lie detector test; is that correct?

A. No, it's pretty much policy, prosecutor out there, we won't go with Polygraph after the warrant itself. Pretty much polygraph before the warrant.

Q. So you wanted to get polygraph before he was arraigned, because it's the prosecutor's policy not to give a warrant?

A. The prosecutor has the policy and its pretty much the officer. Whether to get warrant.

Q. As officer do you know there is a statute which calls for the defendant to be arraigned without undue delay?

A. Yes, sir.

Q. You didn't wasr't to arraign him on the 11th because you wanted him to take polygraph?

A. It was agreed between myself and Mr. Williams that a polygraph should be taken.

Q. It's a prosecutor's policy not to take polygraph after the defendant has been arraigned?

A. To the best of my knowledge, yes.

Q. Is the prosecutor's policy not to look for evidence, like a gun that's been

thrown in the river, until after the defendant's arraigned? They won't look for evidence; is that the prosecutor's policy?

A. I don't think I said anything --

Q. No, I am just asking.

A. I don't know --

MR. JANICE: How can he tell us the prosecutor's policy?

THE COURT: Sustain the objection.

BY MR. MARCUS:

Q. There was one day, what was the it, the 12th? What day was it you went to the river, 11th or 12th?

A. That was the 11th.

Q. Why wasn't he arraigned on the 11th?

A. I was working as fast I could, counsel.

Q. Okay. You thought it was better to go look for the evidence than to arraign the defendant?

A. There again, we were working within certain time limitation, and there was myself and one other officer investigating the case, yes.

MR. MARCUS: I have nothing further, Your Honor.

THE COURT: Anything further?

MR. JANICE; Nor have I.

THE COURT: You may step down, thank you. Pardon me. One question. What time was it on the 10th you told the defendant he was under arrest?

THE WITNESS: The exact time, I couldn't tell you, Your Honor, but it was in the afternoon.

THE COURT: Thank you.

MR. MARCUS: Your Honor, as to the delay in arraignment, I don't know of anything in the statute that says if there's a polygraph in the future, or the next day, or something, that the defendant should not be arraigned.

It is the defendant's right to be brought before the Judge, told what he's charged with. If there is a bond, to set bond. There is nothing in the statute that says you can delay the arraignment because they want a polygraph, or because they want to look for evidence.

As a matter of fact that is the wrong reason to delay arraignment. The statute says defendant arrested -- in case law, that if the defendant is arrested without warrant, he has a right to arraignment without undue delay.

They have waited three days here. They used the wait to gather evidence, and to question the defendant, and he was questioned repeatedly on the 10th, on the 11th. On the 12th they took him in for polygraph. Whether or not he agreed to it he had a right to immediate arraignment if possible.

Again the other arguments, the prosecutor brought up something in his

counter argument about the timeframes. I believe if the Court wants to check, being People versus Blackburn, 354 NW2nd 807.

THE COURT: Would you give me the Michigan citation, please?

MR. MARCUS: I'm sorry, Your Honor. I don't have that. It will have to be converted. It was '84 case from the Michigan Court of Appeals, which states that if the defendant is not given his Miranda warnings and gives a statement, and then right after he's given Miranda warnings, that that does not remove the taint, until there is some period of delay.

Here he was questioned and given the Miranda warnings required and gave the same statements. Based on that case, Your Honor, the statements that follow are still no good.

THE COURT: Give me that Northwest cit and I'll convert.

MR. MARCUS: People versus Blackburn, 354 NW2nd 807.

And again just to reiterate, Your Honor, there was promises of leniency, that that's a subjective test from the case I stated, People versus Conte, which was released March 19th, 1985 which says it's subjective test. If the defendant gives a statement because of those promises, then the statements are involuntary, and cannot be used for any reason, not even impeachment, Your Honor.

Defendant was arrested as the officer said. They -- excuse me, Your Honor. The prosecution said he wasn't arrested at his house on the 10th. Well, for a witness to be patted down and put into the back of the police car, I don't know if it's standard police procedure. I don't know if they do it in Romulus.

THE COURT: Isn't it standard procedure to handcuff a person who is arrested?

MR. MARCUS: They do that, Your Honor. I have to agree the defendant felt he was

under arrest. It was definitely custodial investigation. The manner of the questioning by the officers indicated they felt Mr. Williams was involved. He was the focus and did not give information until after the information they wanted. That was violation of his rights, Your Honor.

THE COURT: Well, let me take a look at your case, plus three others I have here that I want to check.

MR. JANICE: Could we approach the bench for just a second, Your Honor?

THE COURT: Certainly.

(Sidebar conference.)

THE COURT: As the prosecutor must be excused at this point, and between the prosecution and defense, I have been given now five cases they wish me to read, we are going to adjourn this, until when?

MR. JANICE: Whenever is convenient with the court and defense counsel, because I appreciate both of you letting me go to the dentist.

THE COURT: Well, let me read the cases, and I'll call you gentlemen as to what date you can get back.

MR. JANICE: Fair enough.

(The proceedings were concluded on this date)

TRIAL COURT ORDER AND OPINION
GRANTING IN PART,
AND DENYING IN PART,
MOTION TO SUPPRESS EVIDENCE

See Petition, Appendix E.

[October 28, 1985, 155]

(About 3:01 A.M.)

MR. AGACINSKI: At this time we wish to recall David Early, Your Honor, to go into the other area of examination.

THE COURT: Sure.

DAVID EARLY

recalled as a witness by the People, having been previously sworn by the Court, was examined and testified as follows:

THE COURT: You are still under oath, Sergeant Early.

THE WITNESS: Yes sir.

DIRECT EXAMINATION (continued)

BY MR. AGACINSKI:

Q. Your name again is what?

A. Sergeant David Early.

Q. The same David Early who testified this morning.

A. The same one.

Q. I am going to hand you what has been marked People's Proposed Exhibit Number 9 and ask you if you can

identify that exhibit?

A. Yes, I can.

Q. What is that exhibit?

A. This is the envelope that I sealed three casings that I found on Zeeb Road and I-84. I wrote the Romulus Police case number across the top, location Zeeb Road and I-94, the date 4-13-85 and my initials.

Q. Is your handwriting still on the exhibit?

A. Yes, sir, it is.

Q. Those are the three casings you talked about that you found on or about April the 13th when you went there with Mr. Daly?

A. Yes, sir.

Q. After you recovered them you turned those over to the Northville State Police Department?

A. They were sealed in the envelope and turned over in their sealed form to the lab.

Q. These same envelopes you have turned over to them?

A. Yes, sir.

Q. You also indicated this morning that you first met Mr. Robert Williams on April 10th, 1985?

A. That's correct.

Q. And where did you first met Mr. Williams?

A. At Mr. Williams' house in Taylor.

Q. And who went with you to Mr. Williams' house in Taylor.

A. Officer Ondejko.

Q. And were you there to arrest Mr. Williams at that time?

A. No, sir.

Q. What did you at that time?

A. At that time we were granted admission to the house by Mr. Williams' father and we asked to talk to Mr. Williams regarding this case.

Q. Did you ask to talk to him at the house or someplace else?

A. We asked him to accompany us to the police station.

Q. You asked the father...?

A. Asked Mr. Williams. I am sorry.

Q. What did he say to your request?

A. Mr. Williams indicated he had more or less been waiting for us to contact him, that he knew we were coming up to talk to him and he agreed to accompany us to the police station.

Q. To the Romulus Police Station?

A. To the Romulus Police Station?

Q. What time did you arrive at the Romulus Police Department?

A. I don't remember the exact time. Probably the early afternoon.

Q. Of April 10th.

A. Of April 10th.

Q. And at that time was he under arrest?

A. No, sir.

Q. Did you talk to him about the deaths of Mr. Van Hooper and Mr. David Stanley?

A. Yes, I did.

Q. Did there come a time when you read him his Miranda rights?

A. Yes, sir, I did.

Q. How long had you been talking to him when you read him his Miranda rights?

A. I would say approximately 35 to 40 minutes at the police station.

Q. You had been talking for that time before reading the Miranda rights?

A. Yes, sir.

Q. Was that conversation up to the point of the Miranda rights recorded in any way.

A. Yes.

Q. How was it?

A. It was recorded on a cassette recorder which sits on my desk.

Q. At some point you did advise him of his Miranda rights?

A. That's correct.

Q. How did you advise him of his Miranda rights?

A. I read them off a standardized waiver of rights form that we have at Romulus. Myself, I have a copy in my pocket.

Q. Could you indicate or read into the record what you read to Mr. Williams after your 35-minute or 40-minute conversation.

A. Yes, sir.

It reads: You are being questioned in regard to your participation or knowledge of a criminal complaint. You understand that, one, you have the right to remain silent; two, anything you say can and will be used against you in a court of law; three, you have the right to have an attorney present before and during the time you answer any questions or make any statements; four, if you cannot afford an attorney, one will be provided for you by the court without cost prior to

answering any questions or making any statement; five, do you understand your rights that I have explained to you?

Q. And did he indicate?

A. At that time Mr. Williams indicated that he did understand his rights and did not wish any attorney at that time.

Q. And was the beginning of the Miranda warnings also placed on tape?

A. Yes, sir.

Q. That tape is still available, is it not?

A. Yes.

Q. After reading Mr. Williams' his Miranda rights, then what happened?

A. Then I continued questioning Mr. Williams about the events of the Friday before the homicide or the Friday of the alleged homicide and the events of the day and evening.

Q. What did he tell you had happened?

A. He had said that he had gone to his brother's house and his brother -- at his brother's house he had met Mr. Sennett and they had left together, he and Mark Sennett, and they had driven around eventually met up with Van Hooper and David Stanley.

Q. Did he say where they met up?

A. I believe he first met them in from of Hooper's residence.

Q. You believe that's what he told you or that's what you believe happened?

A. I believe that's what he told me. In front of Hooper's residence.

Q. What did he say after he met up with these two men in front of Mr. Hooper's residence?

A. At that point Mark Sennett had gotten into the car with Hooper and Stanley.

Q. That is what Mr. Williams told you?

A. That's what Mr. Williams told me.

Q. And then what did he say happened?

A. He said from there Mr. Williams went over to Jerry Woods' house and was to meet up with Mark Sennett later. From there Mr. Williams indicated he went to Jerry Woods' house and was unsure where Mark Sennett and the other two had gone.

Q. What did he say after that happened?

A. After that he stated after watching TV for sometime at Jerry Woods' house, Mark Sennett and Hooper and Stanley arrived driving a black Volvo and at that point Mark Sennett indicated to Mr. Williams that he wished Williams to follow him.

Q. Then what did he say?

A. He said they then left Jerry Woods' residence and drove to the City of Romulus, stopped on a dead end one-way street in there he stopped the Torino behind the Volvo, Mark Sennett had come back to the Torino and spoke with Bobby Williams.

Bobby Williams said there was a comment made to the effect: Shall I use a knife or should I use a gun? And at that point Sennett went back up to the Volvo.

Q. Did Mr. Williams say what was the response made to that question?

A. He did not. Mr. Williams indicated that he had existed the Torino for a minute and his hat had blown off and he was in the process of retrieving his hat and getting back in the Torino when Mr. Sennett came up and said this to him.

Q. He said Mr. Sennett said what to him?

A. Should I use a knife or should I use a gun? And at that point Sennett went back up to the Volvo.

Q. Did Mr. Williams say what was the response made to that question?

A. He did not. Mr. Williams indicated that he had existed the Torino for a minute and his hat had blown off and

he was in the process of retrieving his hat and getting back in the Torino when Mr. Sennett came up and said this to him.

Q. He said Mr. Sennett said what to him?

A. Should I use a knife or should I use a gun.

Q. Did Mr. Williams say if he gave an answer to that?

A. No, he did not.

Q. Then what did Mr. Williams say?

A. Mr. Williams said he got back in the Torino and started to turn the car around, that he had been told by Mr. Sennett to turn the car around.

Mr. Williams stated that as he was turning the car around, he heard what sounded like gun shots, he saw what he believed to be muzzled flashes from inside the Volvo.

Q. Then what did Mr. Williams tell you?

A. Mr. Williams then indicated that Mr.

Sennett jumped back into the Torino and told him to drive.

Q. Then what did he say happened? What did he say?

A. He said from there they went back to Mr. Sennett's residence and while there, Mr. Sennett changed his clothes, asked Mr. Williams to help him clean up his jacket, and from there they again left in the Torino and drove down to the river to discard the clothing and the gun.

Q. Did Mr. Williams say whether he helped Mr. Sennett clean up the jacket?

A. Yes. He said he sat at the table and cleaned the jacket.

Q. Did Mr. Williams say how they got to the river to get rid of the items?

A. Mr. Sennett drove the car down to the river because Mr. Williams stated that while they were driving, Mr. Williams threw Sennett's boots out the window.

Q. Mr. Williams said he threw the boots out the window himself?

A. Yes.

Q. That's what he said to you?

A. Yes.

Q. What else did he say, if anything?

A. He also said when they stopped down by the river, Mr. Williams indicated that Mr. Williams got out of the car and walked up to the edge of the river and threw the gun as far as he could.

Q. Mr. Williams said he threw the gun into the river?

A. That's correct..

Q. That's what he told you that first day?

A. Yes, sir.

Q. Did he say anything else at that time?

A. At that point he indicated they went over to Shelby Singleton's house and--

Q. Who did he say?

A. The two of them, Sennett and Williams.

Q. That's what he said?

A. Yes. Bobby Williams indicated he didn't know Mr. Singleton that well and after that they then returned back to -- Mr. Williams returned back to his own house where he walked over and spoke to Frank Daly and Mr. Sennett then left driving the Torino.

Q. Did Mr. Williams say anything else then about the death of Mr. Van Hooper or Mr. David Stanley at that point?

A. Not from that point. No, sir.

Q. During that conversation did he say anything as to why these two men died? Did he offer any explanation as to why he claimed Mr. Sennett acted?

A. Not in that conversation. No, sir.

Q. Was that conversation also tape recorded?

A. Yes, sir.

Q. That's still available?

A. Still available.

MR. AGACINSKI: If I may have one moment, Your Honor.

Q. During the course of this first discussion with Mr. Williams, right after giving his Miranda rights the first time that you described it, did Mr. Williams talk at all as to what happened or any conversation between himself and Mr. Sennett or when Mr. Sennett first drove up in front of Mr. Woods' house? Do you recall that first discussion?

A. No. I don't have an independent recollection of what was said.

MR. AGACINSKI: I have no further questions, Your Honor.

CROSS-EXAMINATION

BY MR. MARCUS:

Q. Officer Early, how long did you question Mr. Williams on that day?

A. During that conversation, approximately 50 minutes.

Q. Fifty?

A. Approximately.

Q. Was that conversation recorded?

A. Yes.

Q. You have a copy of that recording here, don't you?

A. Yes.

Q. Okay. Well, what you described as the conversation only took you about 15 minutes, ten minutes.

Was there more to that conversation which you didn't tell this Court?

A. There was approximately 35 minutes of conversation leading up to the point where Mr. Williams was Mirandized and most of what was said during that statement was late told by Mr. Williams either to be untrue or not relevant to the case. And what I repeated afterwards is basically a summary of facts that Mr. Williams said.

Q. So it's a summary of what he said. Do you have any notes, written notes of what he said?

A. No. I am going by strictly recollection at this point.

Q. So there are some things that were left out, is that correct?

A. Exact wording and exact details, probably, yes.

Q. But you have an exact conversation on the tape with you today, don't you.

A. Yes, I do.

MR. MARCUS: Your Honor, I would ask that the Court would listen to that tape.

THE COURT: Sure. Why don't you mark it as an exhibit, then we can go in chambers and listen to it or here.

MR. AGACINSKI: The defendant, I guess, has to be present. That's the only problem. However it's best with the Court.

THE COURT: Okay. We can play it right here.

THE WITNESS: You want the tape in its entirety or from Miranda on?

MR. MARCUS: In its entirety.

MR. AGACINSKI: It's about 50 minutes.

THE COURT: Fifty minutes?

MR. AGACINSKI: Five-0 minutes. Yes.

THE COURT: Okay. My suggestion is to mark it as an exhibit and then perhaps we can stipulate that the reporter won't have to take it down. Can we do that?

MR. AGACINSKI: I have no objection. I think that is a fine procedure.

MR. MARCUS: Agreed, Your Honor. No objection.

THE WITNESS: If I may. Mr. Marcus, you have a direct copy of the tape which doesn't have as much background, which is clearer.

MR. MARCUS: I have no problem with that.

MR. AGACINSKI: I have no problem. After he hears the tape, he can testify that's a reproduction of the entire conversation.

THE COURT: You do have one clearer than the other?

THE WITNESS: Yes. The copy made for

Mr. Marcus was on a different recorder which has less background noise.

THE COURT: Okay. You do have the other one just in case?

THE WITNESS: Yes.

THE COURT: Let's mark the clearer one. I like to listen to clear tapes.

(The People's Proposed Exhibit No. 10 was marked for identification by the Reporter.)

MR. MARCUS: I believe that's all the evidence that will be brought up today.

THE COURT: Okay. Bring him right back. As soon as you bring him back, we will be ready to go.

THE SHERIFF: All rise. This court is in recess. (A recess was had at about 3:18 P.M.)

- - -

(After recess, the Court, all counsel and the defendant present at about 3:28 P.M.)

THE SHERIFF: All rise. This court is in session. Please be seated.

THE COURT: Do you want to have him identify the tape?

MR. AGACINSKI: I think so. It is for the defense but I think that would be the best way, to identify the tape. I think he produced it himself for the defense.

THE WITNESS: That's correct.

THE COURT: We marked it People's Exhibit 10. Do you want to mark it as the defendant's exhibit?

MR. MARCUS: We can leave it.

THE COURT: You want to have him identify it?

MR. AGACINSKI: I will do that. Okay.

REDIRECT EXAMINATION

BY MR. AGACINSKI:

Q. Sergeant Early, you testified that the recording -- that the interview you conducted with Mr. Williams was put on tape; is that correct:

A. That's correct.

Q. You have an object in you hand marked People's Proposed Exhibit Number 10?

A. Yes, sir.

Q. What is that?

A. This is an exact copy of the original tape which I made for the defense.

Q. How did you make that copy?

A. I made that copy on my own personal cassette to cassette recorder which duplicates tapes.

Q. Did you have a chance to listen to all or part of that tape?

A. I have not listened to the entire copy but it was directly off the original which I did listen to in its entirety.

Q. You listened to part of this tape?

A. Yes. I listen to part of this tape to make sure the clarity was there.

Q. The clarity was there and it was recorded properly?

A. Yes.

Q. I wonder if you might play the tape for the Court. Afterwards we will ask you if that does indeed capture the entire conversation you had with Mr. Williams.

But before listening to the tape, I will ask you: Did anybody else take part in the conversation that was recorded on the tape between you and Mr. Williams?

A. Present during the entire interview was myself, Mr. Williams and Officer Mike Ondejko.

Q. Did he also speak?

A. Yes. He did. There will be three voices on the tape.

MR. AGACINSKI: That's it as far as foundation.

THE COURT: You are offering People's Exhibit 10 then?

MR. AGACINSKI: Yes, Your Honor.

THE COURT: Any objection?

MR. MARCUS: No objection.

THE COURT: All right. May be received.

(The tape, People's Exhibit 10, was played from about 3:30 P.M. until about 4:11 P.M.)

* * *

THE COURT: Stop the tape. I think we will recess until tomorrow at it 9 o'clock.

MR. MARCUS: If I may, I believe that was the end of the tape.

THE WITNESS: I believe that was the end of the tape.

THE COURT: Oh, good. Turn it on again.

THE WITNESS: Shall I go on?

THE COURT: Yes. Just to be sure.

THE WITNESS: That would be the end of it.

THE COURT: Okay. Fine. We will recess until tomorrow morning at 9 o'clock.

THE SHERIFF: All rise. (The trial was adjourned at about 4:12 P.M.)

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[3]

Detroit, Michigan

Tuesday, October 29, 1985.

About 9:25 A.M.

- - -

THE SHERIFF: All rise.

Circuit Court for the County of Wayne is now in session, the Honorable Charles Kaufman presiding.

You may be seated.

THE COURT: People versus Robert Williams, 85-567271.

You may proceed, Mr. Agacinski.

MR. AGACINSKI: Yes, Your Honor.

Ms. Williams, you have to wait outside until you testify. Your husband can stay, if he wants.

You are still under oath, Sergeant.

THE WITNESS: Yes, sir.

DAVID EARLY

called as a witness by the People, having been previously sworn by the Court, was examined and testified as follows:

REDIRECT EXAMINATION (Continued)

BY MR. AGACINSKI:

Q. Again your name for the record?

A. David Early.

Q. Sergeant Early, did you have an opportunity yesterday just before we left court to listen to the entire tape that was played for the judge?

A. Yes.

Q. Did we play the entire tape that you recorded during that first interview with Mr. Robert Williams?

A. Yes., sir.

Q. Was that tape an accurate capturing of the entire dialogue or trilogue that occurred between yourself, Robert Williams and Officer Ondejko?

A. Yes, it was.

Q. Okay.

When you testified yesterday, you mentioned that there were some details about throwing out boots, throwing out coats, throwing out guns.

TRIAL TESTIMONY: Early

Where did that dialogue occur?

A. That dialogue occurred in a subsequent interview approximately 15 to 20 minutes after the one we played yesterday.

Q. That's the allusion you made to playing from the beginning again of the tape?

A. Yes, sir.

MR. AGACINSKI: I have no further questions, Your Honor.

MR. MARCUS: I have no questions.

THE COURT: Okay. Sergeant, you may step down.

THE WITNESS: Thank you.

MICHIGAN COURT OF APPEALS OPINION

See Petition, Appendix F.

DISTRICT COURT OPINION AND ORDER

See Petition, Appendix D.

SIXTH CIRCUIT COURT OF APPEALS OPINION, ORDER, AND JUDGMENT

See Petition, Appendices A-C.